IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 479 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMUBHAI RAVJIBHAI PATEL - Applicant(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MP SHAH for Applicant(s) : 1,MS. KRUTI M SHAH for Applicant(s) : 1,
Public Prosecutor for Respondent(s) : 1,
MR MM TIRMIZI for Respondent(s) : 2 - 3.
MS MEGHA JANI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 23/12/2005

CAV JUDGMENT

1.The present Criminal Revision Application under Section 397 read with Section 401 of the Criminal Procedure

Code, 1973 is directed against the judgment and order passed by the learned Sessions Judge, Valsad dated 16.1.2003 in Sessions Case No.346 of 2002 (Old No.106 of 2000).

2. The short facts of the case are that the deceased Chanchalben was daughter-in-law of accused no. 1 – Ramiben Somabhai and wife of accused no. 2 – Dharmeshbhai. It is alleged that both these accused were giving mental and physical torture to the deceased, as, they doubted the character of the deceased. It also appears from the record that the deceased was not allowing accused no.2 to congenial marital life. It also appears from the record that it is alleged that the three accused have hatched the conspiracy to kill the deceased and as a part of the said conspiracy on 14.02.2000 during the period between 10.00 to 11.50 in the night have abeted one another so as to kill the deceased Chanchalben when she was sleeping in the residential house of the accused and the death of the deceased was because of strangulation.

3. As per the case of the prosecution, when Chimanlal Parsottamdas Pardi, P.S.I., - Investigating Officer was in the Police Station on 11.04.2000 and on the basis of the information given by the complainant, the Investigating Officer visited the scene of offence and

recorded the complaint given by the complainant wherein it was stated that the deceased had committed suicide and, therefore, the investigating officer registered the offence under Sections 306, 498-A and 114 of Indian Penal Code and also drawn the panchanama of the said place. The inquest panchanama was drawn and sent the dead body for postmortem. Having shown the accelerator wire by the accused – Dharmesh, the same was recovered by drawing the panchanama. The accused no.1 was arrested and other two accused were arrested later on. Later on, having received the postmortem report, wherein it was stated that the death of the deceased was not by herself but it was by way of strangulation and, therefore, Section 306 was deleted and added Sections 302, 201 and 498-A of Indian Penal Code.

4. Ultimately, the chargesheet at Exh.5 was submitted in the court of the learned Additional Sessions Judge. After conduct of trial, the learned Sessions Judge considered the materials on record with particular reference to the circumstances allegedly pointing towards the guilt of the accused – respondents and recorded the finding that the prosecution has failed to prove the case under Section 302 of Indian Penal Code and acquitted the accused Nos.1 and 3 for the offence under Sections 302, 201, 498-A, 120-B and 114 of Indian

Penal Code as well as accused No.2 was also acquitted for the offence under Sections 302, 201, 120-B and 114, but accused No.2 held guilty for the offence under Section 498-A of Indian Penal Code.

5. I have given my thoughtful consideration to the submissions made by both the parties apart from inviting my attention to the relevant portions of the judgments of the Honourable Apex Court and the evidence on record to justify their respective stands.

6. It can be noticed from the record that the prosecution has examined as many as 14 witnesses and has produced the documentary evidences. Thereafter, the prosecution had submitted the closing purshis Exh.48.

7. It can also be noticed from the record that the incident in question had occurred on 10.4.2000 during the midnight between 10.00 to 11.50 p.m. The learned Sessions Judge has come to the conclusion that the father of the deceased lodged the complaint on 11.4.2000 saying that in-laws of the deceased were ill-treating her and because of the harassment and ill-treatment, she has committed the suicide by hanging herself and the panchnama of the scene of offence is at Exh.20. It can be seen from the panchnama at Exh.20 that there is no eye witness of the offence in question. The witness No.14 – Investigating Officer has

been examined at Exh.40 wherein he has stated that the complainant has given the complaint saying that her daughter has committed suicide, and, therefore, the complaint was registered under Section 306, 114 and 498-A of Indian Penal Code.

8. It can also be noticed from the record that having received the P.M.report, Section 306 of IPC was deleted and Sections 302, 221, 498-A and 201 were added as it was found in the report that the death of the deceased was by way of strangulation. The witness No.8 – Medical Officer has been examined at Exh.30 whereas P.M.Note has been produced at exh.32. The Medical Officer in her deposition has stated that the death of the deceased is not by way of hanging herself, but the death is by way of strangulation, but it is pertinent to note here that this aspect has not been challenged in the cross examination. After appreciating the evidence on record, the learned Sessions Judge has come to the conclusion that it is proved beyond reasonable doubt that the death of the deceased Chanchalben is culpable homicide amounting to murder.

9. The learned Sessions Judge, after appreciating the evidence on record, more particularly, the evidence of the complainant, wife of the complainant and Ranchhodbhai that accused No.2 was extending physical

and mental harassment to the deceased Chanchalben and it is held that it is proved that accused No.2 was extending physical and mental harassment and ill-treatment to the deceased.

10. It is required to be noted that the deposition of the witness – Kirit Laxmidas has been recorded at Exh.25 and he is not supporting the panchnama Exh.26 for recovery of muddamal article. Even, the said witness does not know the accused. Further, the other panch of the panchanama at Exh.26, i.e. Abdul Rauf Mohammad Ishaq has not been examined. The learned Sessions Judge has recorded the finding that there is no eye witness that all the accused have been seen together. Even, it is not proved that at the time of occurrence of the incident in the night, all the accused were present at the home. Ultimately, after appreciating the evidence on record, the learned Sessions Judge has come to the conclusion that the prosecution has failed to prove the case under Sections 302, 201, 498-A, 120-B and 114 of IPC against accused Nos.1 and 3.

11. So far as section 498-A of the Indian Penal Code is concerned, the requirement of the statute is acts of cruelty by the husband of a woman or any relative of the husband. In ordinary parlance, the word “cruelty” denotes a state of conduct which is painful and

distressing to another. Therefore, the intention of the legislature is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing. In light of the aforesaid facts, I am of the considered opinion that the learned Sessions Judge has rightly held accused No.2 guilty for the offence under Section 498-A of IPC.

12. It is required to be noted that if the prosecution evidence is not accepted as correct and unreliable for specific reasons, the silence of the accused can be of no avail to the prosecution, for such conduct of silence can never be permitted to become a substitute for proof by the prosecution. Therefore, taking into account all the surrounding circumstances and in view of the unsatisfactory evidence produced by the prosecution, I am of the view that the learned Sessions Judge has rightly acquitted the accused for the offence under Sections 302, 201, 498-A, 120-B and 114 of IPC except accused No.2 guilty for the offence under Section 498-A of IPC.

13. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is now

well settled that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation. The ordinary rule that applies to criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by this rule of evidence. The section cannot be used to make up for the inability of the prosecution to produce evidence of circumstances necessary to prove the guilt of the accused. It is only in cases where the facts proved by the evidence give rise to a reasonable inference of guilt unless the same is rebutted and such inference can be negatived by proof of some fact which in its nature can only be within the special knowledge of the accused.

14. In the present case, there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. The Honourable Supreme Court in a series of decisions has consistently held that when a case rests

upon circumstantial evidence, such evidence must satisfy the following tests :-

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else ; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

15. There is no evidence whatsoever either from the neighbours or from others to show that the accused at any time ill-treated the deceased or treated her cruelty except accused no.2. Thus, there is no conclusive evidence that the accused committed the offence punishable under Section 302. Therefore, I am of the considered opinion that it cannot be said that

in absence of explanation regarding incriminating circumstances in the further statement recorded under Section 313 of the Criminal Procedure Code, it provides missing link in the chain of circumstantial evidence. It is unfortunate that Chanchalben died at the place of her in-laws at village Rabdi. It is by now well-settled that no one can be convicted on the basis of mere suspicion though strong it may be. It also cannot be disputed that when we taken into account the conduct of the accused, his conduct must be looked at in its entirety. Whereas, it is equally true that when there is manifest error on the point of law and consequently, there has been flagrant miscarriage of justice, interference by the High Court under the revisional jurisdiction is justified. I am, therefore, of the view that the circumstances appearing in this case while examining keeping in mind, the above principles laid down by the Hon'ble Apex Court do not lead to any decisive conclusion that either all these accused or any of them had committed the murder of the deceased. Under the circumstances, the judgment and order passed by the learned Sessions Judge, Valsad does not call for any interference.

16. In the result, this Criminal Revision Application fails and the same is dismissed. Rule is discharged.

(SHARAD D.DAVE,J)

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